



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**GREG MILLS et al. v. ARIZONA BOARD OF TECHNICAL
REGISTRATION, et al.
CV-21-0203-PR**

PARTIES:

Plaintiffs/Appellants/Petitioners: Greg Mills and Southwest Engineering Concepts, LLC (“SOENCO”)

Defendants/Appellees/Respondents: Arizona Board of Technical Registration, *et al.*

**Amici Curiae:
(in Support of Petitioners)** Goldwater Institute; Pacific Legal Foundation

**Amici Curiae:
(in Support of Respondents)** National Council of Architectural Registration Boards and National Council of Examiners for Engineering and Surveying

FACTS:

For more than two decades, Mills was an engineer who was not required to register as a “professional engineer.” He designed, analyzed, tested, and built electronic circuits for a manufacturing company. In 2008, Mills started his own consulting firm, Southwest Engineering Concepts, LLC (“SOENCO”), where he is the “Principal Engineer” and does the same type of work.

The Arizona Board of Technical Registration (“the Board”) received a complaint from one of Mills’ customers alleging both work-quality issues and that Mills was not a registered engineer with the Board. In early May 2019, the Board notified Mills of the complaint and indicated that Mills and SOENCO (collectively “Petitioners”) were required to comply with Arizona law governing “engineering practice.” Petitioners’ response was that Petitioners have never done any work in any board-regulated profession.

In late June 2019, the Board informed Petitioners that a preliminary investigation was underway and alleged that Mills was in violation of applicable statutes and regulations by: (i) calling Mills an engineer; (ii) designing and building electronic circuits for products; and (iii) owning an engineering firm. In early August 2019, the Board sent Petitioners a draft consent agreement, proposing to resolve the investigation for a \$3,000 fine, \$375 in costs, and an order for Petitioners to comply with the law. Petitioners did not agree to the consent agreement.

The Board invited Mills to an October 2019 meeting to discuss the investigation. Mills elected not to attend. At that meeting, the Board voted to amend the consent agreement to increase the fine to \$6,000. The Board provided Petitioners the amended consent agreement the next day. Petitioners did not agree to the amended consent agreement.

Prior to any further Board action, Petitioners filed a complaint against the Board and its members and executive director in their official capacities. Petitioners sought a declaration that the statutes and the Board's powers and procedures be declared unconstitutional because they violate the free speech, economic liberty, due process, and separation of powers guarantees of the Arizona Constitution. Petitioners also sought injunctive relief and \$1 in nominal damages. Petitioners did not serve a notice of claim.

The Board moved to dismiss, arguing: (i) the superior court lacked jurisdiction because Petitioners failed to exhaust their administrative remedies; and (ii) Petitioners failed to state a claim because they lacked standing, their claims were unripe, and they had failed to serve a notice of claim. After full briefing and oral argument, the superior court granted the motion and dismissed the action in its entirety for lack of subject matter jurisdiction and failure to state a claim due to lack of standing and/or ripeness.

Petitioners appealed, arguing the court erred in dismissing their claims for failure to exhaust administrative remedies, lack of standing and ripeness. The Court of Appeals affirmed the dismissal.

ISSUES:

As presented by Petitioners:

- I. Did the court erroneously dismiss Petitioners' Declaratory Judgement Act claims for lack of ripeness after the Board threatened to prosecute them, impose thousands of dollars in fines, and order them to stop speaking and working?
- II. Did the court erroneously dismiss Petitioners' constitutional challenges to Arizona statutes and the Board's administrative powers and procedures for failure to exhaust administrative remedies when Petitioners cannot apply to the Board for relief and the Board cannot remedy their injuries?

DEFINITIONS AND APPLICABLE STATUTES:

An “**engineer**” is a person who by reason of engineering education, training, and experience may apply engineering principles and interpret engineering data. A.R.S. § 32-101(B)(10).

A “**professional engineer**” is a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer. A.R.S. § 32-101(B)(29).

“**Engineering practice**”, as defined by A.R.S. § 32-101(11):

means any professional service or creative work requiring engineering education, training and experience in applying engineering principles and interpreting engineering data to engineering activities that clearly impact the health, safety and welfare of the public and the engineering design of buildings, structures, products, machines, processes and systems to the extent that the engineering education, training and experience requirements prescribed by §§ 32-122 and 32-122.01 are necessary to protect the health, safety and welfare of the public. . . . A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person’s employer. A person is deemed to practice engineering if the person does any of the following:

- (a) Practices any discipline of the profession of engineering or holds out to the public that the person is able and authorized to practice any discipline of engineering.
- (b) Represents to the public that the person is a professional engineer by a verbal claim, sign, advertisement, letterhead or card or in any other manner.
- (c) Uses a title that implies that the person is a professional engineer.

Under the **Uniform Declaratory Judgement Act**, “[a]ny person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.” A.R.S. § 12-1832.

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